

A New Castle City Board of Adjustment Hearing took place on May 3, 2012 at 7 p.m. in the City of New Castle's Town Hall.

Present: Mayor Donald R. Reese
Daniel R. Losco, City Solicitor
David J. Athey, City Engineer

City Personnel: Jeff Bergstrom, City Code Official

Mayor Reese called the meeting to order at 7 p.m. Roll call was taken.

Mayor Reese read the Notice of Public Hearing that states, "An application has been filed by Donald G. Oren, 305 Moores Lane, New Castle, DE 19720 for property located at 206 & 208 Moores Lane, New Castle, DE, parcel numbers 21-007.00-184 & 21-007.00-185, seeking variances from the code for lot width to allow for 50 ft. wide lots instead of the required 65 ft. wide lots and from the front yard setback on both lots to allow the structure to be built with a front setback of 20 ft. instead of the required 30 ft..

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Thursday, May 3, 2012, at 7 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Streets, New Castle, Delaware."

An affidavit of publication was published in the News Journal and the New Castle Weekly. Mr. Bergstrom testified the property has been properly posted. No comments or correspondence has been received in support of or against the application.

(Mrs. Wendy Oren was sworn in.)

Mr. Brian Murray, P.A., is representing the applicant and presented to the Board. The property at 208 Moores Lane had a semi-detached duplex house on it that was damaged by fire. Mr. Oren purchased the property in July 2011 and took the house down per City orders because of its poor condition. The lot at 208 Moores Lane is 70 ft. wide and 206 Moores Lane is 30 ft. wide. The applicant would like to combine the lots and create two (2) 50 ft. lots. The applicant is requesting a lot width variance because the lot width in the zoning district is 65 ft. The applicant is also seeking a variance of the front yard setback from 30 ft. to 20 ft.

There are a variety of lot widths in the neighborhood. Examples were cited from New Castle County tax parcel records: 108 Moores Lane is 55 ft. wide; 203 Moores Lane is 40 ft. wide; 210 Moores Lane is 30 ft. wide; 212 Moores Lane is 50 ft. wide and 216 Moores Lane is 40 ft. wide. There are larger lots behind Moores Lane on Baldt Avenue where one side of the street there is one property measuring 65 ft. wide and on the other side of the street there are four (4) lots measuring 40 ft. wide (200 Baldt Avenue, 202 Baldt Avenue, 210 Baldt Avenue and 210 Baldt Avenue). The lot at 301 Baldt Avenue is also 40 ft. wide. Lots at 201 Baldt Avenue, 205 Baldt Avenue, and 207 Baldt Avenue are all 60 ft. wide.

Based on the various lot widths in the area that do not conform with the 65 ft. lot width requirement the requirement would not be out of character. Having two (2) new houses on the lots would enhance the area rather than cause detriment. Granting these variances would not deny others in the community something they do not currently have.

Almost all of the properties in the area are within the 20 ft. setback line which is the prevailing existing setback. Houses on Baldt Avenue also appear to be 20 ft. By requiring

these houses to be 30 ft. back would create an odd visual situation rather than being in alignment with other houses.

Discussion turned to the odd shape (jagged) of the dividing lines of the two (2) lots. There is a garage in the rear of the property and there will be a shared driveway. Messrs. Athey and Losco questioned the configuration of the lots on the plot plan; it is not to scale and the survey appears to be incorrect. According to Mr. Athey, when the property is re-subdivided a signed and sealed survey plan will be required and needs to indicate the lot size (7,500 square ft.).

Mr. Losco asked Mr. Bergstrom how he measures the building setback line, in this case 30 ft. Mr. Bergstrom measures from the building restriction line and the lot at the street, which should be the same minimum, with exceptions for cul-de-sacs. Referring to the jagged line on the plot plan, Mr. Losco asked Mr. Murray if it is intended to be 50 ft. wide both at the 30 ft. building setback line (existing building setback line) as well as the street. Mr. Murray confirmed that is a correct statement.

Mr. Athey informed there is a 7,500 ft. minimum lot area in the R1 zoning district and if the surveyor is off in measurements, one of the lots is undersize. Mr. Losco agreed with Mr. Athey's statement that a subdivision plan cannot be approved without the engineer sealing a plan stating there is 7,500 ft. on both sides.

Mr. Athey would like bearings on the lines on the plot plan to ensure there are two (2) 7,500 ft. lots shown. Mr. Murray will suggest the applicant take care of the driveway through easements and maintenance agreements.

Mr. Bergstrom established that the non-conforming status was lost when the house burned down and left vacant more than one (1) year ago. Mr. Oren took it upon himself to tear down both sub-standard houses in an effort to clean up the area. The City was also ordering the homes to be demolished. The applicant is not asking for an increase in density.

Mrs. Oren testified the new homes will be two stories. Many of the homes in the area are also two stories. The condition of the former homes was in poor condition and Mr. Bergstrom reported the former owner had been cited by the City.

Mr. Athey asked how wide the widest lot would be in the area. Mr. Murray said there is an adjacent lot measuring 80 ft. There is also a 70 ft. lot nearby. Mr. Athey offered that if the application is denied the owner could build one (1) house on a 100 ft. lot which would be larger than other homes in the area.

No members of the public were present to support or object to the application. The presentation portion of the hearing was adjourned and deliberations began.

In accordance with Section 230-57C(3) of the Zoning Code, Mr. Losco moved that approving the setback of 20 ft. rather than the required 30 ft. would be in character with the neighborhood and enforcing 30 ft. would make the new homes negatively stand out. With regard to lot widths, making the lot 100 ft. would be at least 20 ft. wider than others in the area and could be as much as 40-60 ft. wider. The prior owner had the right to have two (2) dwellings on the property and losing that right because of a lack of 10 ft. of frontage

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on each lot is a practical hardship in his view. The applicant did not create the size of the lots and one lot was non-conforming. The non-conformity was lost when the house burned down and abandoned for more than a year. The present owner is trying to improve it and make it conform to Code. The jagged line in the middle is odd and will need to be resolved at the sub-division level.

Mayor Reese seconded the motion.

Mr. Athey has no issues with the application. The applicant has demonstrated there are special conditions and circumstances that exist that are peculiar to the land.

The literal interpretation of the provisions of the Code would deprive the applicant of rights commonly enjoyed by other properties. Special conditions and circumstances are not the result of the applicant. The applicant did not subdivide the lot. The Board does not believe it is conveying any special privileges on the applicant.

The applicant lost his non-conformity when the house was left vacant for more than a year and other than creating a 100 ft. wide lot that would be out of harmony for the area, this is a more simple approach. For all of these reasons he supports both variances.

Mayor Reese supports approval of both variances.

The setback and lot width variance requests were approved by unanimous vote.

The hearing was adjourned at 7:35 p.m.

Respectfully submitted,

Debbie Turner

Debbie Turner
Stenographer

Exhibit #1 – New Castle County tax parcel plot plan